IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO.827 OF 2003
IN
SUMMARY SUIT NO.974 of 2003

Ashok R. Shah Plaintiff

versus

Vandanbhai P. Gosalia Defendant

D.C.Joshi i/by C.C.Joshi for plaintiff.

M.P.Vashi with Santosh Shetty for defendant.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 12th July 2005

PC :

1. Heard Mr.Joshi appearing for plaintiff and Mr.Vashi for defendant.

2. Plaintiff has filed present suit claiming a decree in the sum of Rs.52,247/-. He claims further interest @ 17% p.a. on the principal amount of Rs.35,000/-.

3. It is contended that the defendant approached the plaintiff for a friendly loan and the defendant’s request having been accepted, a sum

of Rs.25,000/- was advanced. It is stated that interest was agreed to be paid @ 17% p.a.. The second request of defendant also met with favourable response and on this occasion Rs.10,000/- were advanced. In consideration of this loan, demand promissory notes at Exhibits-A and B have been executed by the defendant. According to the plaintiff, defendant paid interest quarterly of Rs.1,289/- by cheque and such payment is made for the period ending March 2000. Further interest was not paid nor the principal amount repaid. There is an Advocate's Notice to which there is no reply. Consequently, according to Mr.Joshi, the plaintiff is entitled to a decree as prayed.

4. Mr.Vashi, on the other hand, contends that the suit is filed on the Bills of Exchange but interest is claimed on the basis of an agreement and not at the statutory rate. The claim for interest is denied. It is also denied by Mr.Vashi that the defendant had made payment of interest by cheque as alleged. He invites my attention to the fact that the details pertaining to these cheques are not set out in the plaint nor copies of the same are annexed. He disputes that the bank slips would evidence payment of

interest muchless at the rate of 17% p.a.. However, Mr.Vashi states that the defendant is willing to deposit the principal sum as claimed by the plaintiff.

5. In my view, interest of justice would be served if conditional leave is granted to the defendant to defend the suit on deposit of principal sum of Rs.35,000/- within a period of eight weeks from today.

6. On the defendant depositing the sum, the suit shall stand transferred to the list of commercial causes with usual directions for filing written statement, discovery and inspection. Needless to state that if the amount is not deposited within the time stipulated above, further consequences would follow.

7. Liberty is granted to the plaintiff to apply for withdrawal of amount of Rs.35,000/- and such request would be considered on its own merits and in accordance with law. Summons for Judgement disposed off. No order as to costs.

(S.C.DHARMADHIKARI, J.)